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IN THE

Supreme Court of the United States

October Term, 1965

No. 737

WILLIAM THOMAS CARROLL, *et al.*,
Petitioners,

vs.

UNITED STATES DISTRICT COURT, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR CERTAIN REAL PARTIES IN INTEREST IN OPPOSITION

IRVING A. THAU,
No. 55 Liberty Street,
New York 5, New York.

FRANCIS HEISLER,
P. O. Drawer 3996,
Carmel, California.

ARTHUR BRUNWASSER,
No. 1255 Post Street, Suite 1002,
San Francisco 9, California.

Attorneys for certain real parties in interest.

LODER APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WOrth-2-0689

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INDEX

	PAGE
Jurisdiction	2
Statement of Facts	2
Proceedings Before the National Labor Relations Board	5
Proceedings for Extraordinary Relief by Petitioners in the Lower Courts	6
Conclusion	7

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This Memorandum is submitted on behalf of seventy plaintiffs in two actions now pending in the lower courts.

Said actions were filed in the United States District Court for the Northern District of California, Southern Division, entitled *"Howard B. Keylor, et al., Plaintiffs,* vs. *Pacific Maritime Association, et al., Defendants"* (No. 43003), and *"George B. Williams, et al., Plaintiffs,* vs. *Pacific Maritime Association, et al., Defendants"* (No. 42284). Motions to dismiss the Third Amended Complaint in the *Keylor* case are now under submission to the District Court. The Third and Fourth Amended Com-

plaints in the *Williams* case were dismissed by the District Court, and all plaintiffs are in the process of perfecting their appeals to the United States Court of Appeals for the Ninth Circuit.

Jurisdiction

Respondents filing this Memorandum do not know of any possible grounds for jurisdiction in this Court. The brief for the petitioners has failed to clearly set forth the alleged grounds of jurisdiction.

Statement of Facts

The petitioners are plaintiffs in the District Court actions. The respondents for whom this Memorandum is submitted are also plaintiffs in those actions. All plaintiffs, limited registered longshoremen in the ports of San Francisco and Stockton, California, filed these actions against the defendant Pacific Maritime Association, a multi-employer bargaining representative of the major stevedoring companies on the Pacific Coast, and an employer within the meaning of Section 2(2) of the National Labor Relations Act, and the International Longshoremen's and Warehousemen's Union, the certified collective bargaining representative for longshore employees on the Pacific Coast, and recognized as such under under Section 2(5) of the Act.

At the time these actions were filed, all plaintiffs were represented by Mr. Sidney Gordon, the attorney who has filed the petition for a writ of certiorari herein. The original Complaint in the *Williams* case was served and filed by Mr. Gordon in April, 1964. That Complaint, consisting of fifty-five pages, was dismissed for failure to adhere to the pleading requirements of Rule 8 (Fed. R.

Civ. P.). Subsequently, three additional Complaints [in both actions] were similarly dismissed by the District Court for the same shortcomings.

In February, 1965, a dispute arose between the plaintiffs and their attorney. Most of the plaintiffs in both actions became dissatisfied with the representation of Mr. Gordon, and Mr. Gordon initiated civil actions in the state courts for attorney's fees against those plaintiffs. Mr. Gordon was notified, in writing, that he was discharged, but he refused to relinquish his representation in favor of new counsel. Letters were then forwarded to the District Court by a number of plaintiffs concerning their desire to discharge Mr. Gordon. Finally, formal motions to discharge Mr. Gordon were filed, supported by individual affidavits of the dissatisfied plaintiffs. These motions were resisted by Mr. Gordon. On May 20, 1965, the District Court made its Order substituting the undersigned attorneys in place of Mr. Gordon for forty-seven plaintiffs in the *Williams* case. On June 7, 1965, and June 21, 1965, the District Court made a similar Order for two additional plaintiffs on each of these dates. On June 7, 1965, an Order was made discharging Mr. Gordon as attorney for nineteen plaintiffs in the *Keylor* case. At the present time, Mr. Gordon represents a total of eight plaintiffs in both actions. It is these persons in whose behalf Mr. Gordon has filed this petition for writ of certiorari.

Subsequent to his discharge, Mr. Gordon failed to cooperate with new counsel and refused to make the respective case files available for copying and inspection. Formal motions were made and the court ordered Mr. Gordon to make the files available to new counsel. In the *Williams* case, it was necessary to cite Mr. Gordon for contempt of court in order to finally obtain an inspection of the files.

On June 21, 1965, motions to dismiss the Third Amended Complaint in the *Williams* case came on for hearing before the court. These motions were addressed and directed to: "Sidney Gordon and to Such of the Plaintiffs Herein as He May Represent". At the hearing of these motions, plaintiffs' new counsel did not participate and pointed out to the court that the motions were not directed "to the plaintiffs [whom] I represent". Only Mr. Gordon presented oral argument in opposition at this hearing. It is thus apparent that the parties never intended the motions to dismiss the Third Amended Complaint to apply to any plaintiffs other than those represented by Mr. Gordon. As of June 21, 1965, Mr. Gordon represented only three plaintiffs in the *Williams* case.

The court made its Order dismissing the Third Amended Complaint. A proposed Order submitted by the defendants referred to the ruling as dismissing those plaintiffs *represented by Mr. Gordon.* A proposed Order submitted by Mr. Gordon omitted the italicized phrase. Thus, Mr. Gordon was attempting to have the court dismiss the actions of his former clients, the plaintiffs who were now represented by new counsel. The court did *not* sign Mr. Gordon's proposed Order, but did sign the Order prepared by the defendants. Mr. Gordon has filed a Notice of Appeal to the Court of Appeals in behalf of the three plaintiffs whom he now represents. These three plaintiffs are among the petitioners in the proceeding now pending in this Court.

On June 21, 1965, the fifty-one plaintiffs in the *Williams* case who had discharged Mr. Gordon filed a Fourth Amended Complaint. This Complaint was prepared by their new attorneys. The defendants filed motions to dismiss this latter pleading pursuant to Rule 12 (Fed. R.

Civ. P.). These motions were calendared for hearing on August 16, 1965 and were granted by the District Court which dismissed the Fourth Amended Complaint on October 8, 1965. Those plaintiffs who filed the Fourth Amended Complaint have filed their Notice of Appeal to the Court of Appeals.

In the *Keylor* case, motions to dismiss the Third Amended Complaint were argued in the District Court on August 16, 1965. The motions remain under submission. Five of the petitioners in this proceeding are plaintiffs in the *Keylor* case. The remaining nineteen plaintiffs are represented by the undersigned counsel.

Although it is unclear from the petition herein, we believe that the petitioners are seeking to have this Court review all proceedings in the lower courts subsequent to the filing of the Fourth Amended Complaint in the *Williams* case and the submission of the motions to dismiss in the *Keylor* case. In the *Williams* case, petitioners' counsel particularly objects to the granting of leave permitting his former clients' new attorneys to file their own Fourth Amended Complaint. In the *Keylor* case we are uncertain as to the grounds on which the petitioners support their request for relief, and therefore, are unable to discuss this point.

Proceedings Before the National Labor Relations Board

On or about May 17, 1965, approximately forty-three of the plaintiffs represented by the undersigned attorneys filed unfair labor practice charges with the Regional Office of the National Labor Relations Board in San Francisco. The Regional Attorney refused to issue a Complaint, basing his refusal upon the running of the statute of limitations as set forth in Section 10(b) of the Act.

The charging parties filed a Request for Review with the General Counsel of the Board in Washington. It is apparently this proceeding which petitioners wish to review by certiorari.

Although the reasons advanced by petitioners in their request concerning the N.L.R.B. proceedings are unclear, this matter is now moot, as the General Counsel has recently ruled affirming the decision of the Regional Attorney of the Board and refusing to issue a Complaint.

Proceedings for Extraordinary Relief by Petitioners in the Lower Courts

The proceedings in the lower courts instituted by counsel for the petitioners were as follows:

1. On August 2, 1965, petitioners' counsel sought a stay order from the District Court staying all proceedings in the *Williams* case until such time as the appeal filed by Mr. Gordon on behalf of his three clients would be determined by the Court of Appeals. This motion was denied by the District Court on August 2, 1965.

2. On August 13, 1965, an application by Mr. Gordon to the Court of Appeals for the Ninth Circuit for "Leave to File a Petition for Writ of Mandamus" and for a temporary restraining order to restrain further proceedings in the District Court in the *Williams* case was denied. The number of the application in the Court of Appeals was 20301.

3. On September 7, 1965, Mr. Gordon filed an additional application with the Court of Appeals for "Leave to File Petition for Writ of Prohibition and for Supersedeas", numbered 20326. This second attempt to stay

proceedings in the District Court and certain National Labor Relations Board proceedings was also denied by the Court of Appeals.

4. On or about September 1, 1965, the petitioners filed an "Application for Stay of Orders Pending and Proceedings Pending Petition for Writ of Certiorari" with this Court. On October 13, 1965, Mr. Justice Douglas denied said application.

Conclusion

At the present time, petitioners in the *Williams* case are prosecuting their appeal in the Court of Appeals and petitioners in the *Keylor* case are waiting for a ruling from the District Court on the motions to dismiss their complaint. There appears to be no reason why the ordinary process of appeal, still available in the lower courts, is inadequate to provide petitioners with any relief to which they may be entitled. We respectfully request this Court to deny the petition for a writ of certiorari.

Dated: New York, New York
November 29, 1965.

Respectfully submitted,

IRVING A. THAU
FRANCIS HEISLER
ARTHUR BRUNWASSER

By: IRVING A. THAU

Attorneys for certain real parties in interest.